

In the United States Bankruptcy Court
for the
Southern District of Georgia
Augusta Division

In the matter of:

CHARLES W. HOCK, JR.

Debtor

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Chapter 11 Case

Number 92-10642

ORDER ON DEBTOR'S MOTION TO DISMISS
OBJECTION OF AMSOUTH BANK OF FLORIDA TO THE
DEBTOR'S DISCLOSURE STATEMENT

Upon consideration of the Debtor's Motion, the response thereto, and after review of the file the court enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Debtor's Petition was filed April 1, 1992.

On April 14, 1992, Debtor filed Schedule "A" listing his real property and naming Amsouth Bank of Florida ("Amsouth") as secured with a debt of \$2,314,094.22. The claim was not listed as disputed.

Similarly, on Schedule "D" the Debtor listed Fulton Federal/RTC as a creditor holding a secured claim in an identical amount and described it as being "the same

obligation shown under Amsouth of Florida."

Debtor further explained that he believed the claims to be duplicative and assumed that Amsouth was the servicing agent for Fulton Federal. However, at no place in the Schedules was the claim shown to be a disputed claim.

The claims bar date was August 10, 1992, and Amsouth filed its proof of claim on May 27, 1993. Fulton Federal filed no proof of claim at any time prior to the hearing on the disclosure statement.

CONCLUSIONS OF LAW

Bankruptcy Rule 3003(b)(1) provides that the schedule of liabilities "shall constitute *prima facie* evidence of the validity and amount of the claims of creditors unless they are scheduled as disputed, contingent or unliquidated. It shall not be necessary for a creditor or equity security holder to file a proof of claim or interest except as provided in subdivision (c)(2) of this rule." Rule 3003(c)(2) provides: "Any creditor or equity security holder whose claim or interest is not scheduled or scheduled as disputed, contingent or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)."

Given the information contained in the Schedules, I conclude that the Debtor acknowledged an indebtedness in the amount of \$2,314,094.22 on the date of filing and acknowledged, without showing there to be any dispute, that either Amsouth Bank of Florida or Fulton Federal/RTC was the holder of that indebtedness. On this state of facts

the Motion to Dismiss asserting that Amsouth has no standing is without merit.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the Debtor's Motion to Dismiss Objection of Amsouth Bank of Florida to the Disclosure Statement is denied.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of July, 1993.